



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: General Physics Federal Systems, Inc.

File: B-275934

Date: April 21, 1997

William M. Weisberg, Esq., William T. Welch, Esq., and Monica C. Gray, Esq., Barton, Mountain & Tolle, for the protester.

Paul F. Khoury, Esq., and David A. Vogel, Esq., Wiley, Rein & Fielding, for EG&G Washington Analytical Services, Inc., an intervenor.

James I. Menapace, Esq., and E.J. Hong, Esq., Department of the Navy, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that agency question and answer session constituted inadequate discussions with the protester--even though agency attempted to specify in solicitation that question and answer session following oral presentation would not constitute discussions, and specify that material discussed in question and answer session would be deemed unrelated to an offeror's proposal--need not be reached by our Office where the record shows that the protester cannot demonstrate a reasonable possibility that it was prejudiced by the agency's actions.

2. Contention that agency unreasonably evaluated protester's proposal under the technical evaluation factor is denied where the record shows that the agency evaluation was reasonable and in accordance with stated evaluation criteria.

DECISION

General Physics Federal Systems, Inc. protests the award of a contract to EG&G Washington Analytical Services, Inc. pursuant to request for proposals (RFP) No. N00024-96-R-6430, issued by the Department of the Navy to procure technical and engineering support services for three Navy programs--the New Attack Submarine Program, the Submarine Electronics Systems Program, and the AN/BSY-2 Program. General Physics argues that the Navy improperly held inadequate discussions with it, and that the agency's evaluation of General Physics's proposal was unreasonable.

We deny the protest.

BACKGROUND

The RFP, issued on June 28, 1996, anticipated award of a cost-plus-award-fee level-of-effort contract to the offeror whose proposal offered the best value to the government. The RFP advised that in determining best value, the Navy would be willing to pay up to a 30 percent premium for a technically superior approach.

The RFP requested potential offerors to submit three types of information for review: a proposal, technical information, and cost data. The RFP provided precise definitions for each of these terms. An offeror's proposal was to consist of five discrete items: (1) a completed standard form 33, entitled "Solicitation, Offer and Award"; (2) a completed section B from the RFP, entitled "Supplies or Services and Prices/Costs"; (3) a completed section K, entitled "Representation, Certifications, and Other Statements of Offerors"; (4) a Small, Small Disadvantaged, and Women Owned Small Business Subcontracting Plan; and (5) a list of key personnel names. RFP at 92-93. No other information was considered part of an offeror's proposal.

The second type of information, technical, was to be provided in two parts, oral presentation slides and supplemental written information. RFP at 96-98. The oral presentation slides were to include information on personnel experience, technical approach, management approach, and facilities and resources. Under each of these subject areas additional elements were set forth in the RFP. The supplemental information package was to include resumes for key personnel and specialists personnel, a subcontracting management plan, and information on corporate experience, past performance, and the offeror's workforce loading plan. RFP at 98. The third type of information to be provided was the offeror's cost data. Although neither the technical information nor the cost data was considered part of an offeror's proposal, both were required to be submitted by the initial closing date.

Upon receipt of an offeror's submission--i.e., its proposal, technical information and cost data--the RFP advised that the agency would schedule an oral presentation to permit the offeror to explain the subject areas and elements addressed in the oral presentation slides. In addition, after the presentation of slides, offerors were required to respond to a sample task provided 2 days prior to the oral presentation. After discussion of the sample task, offerors were required to participate in a question and answer session. RFP at 96.

The RFP set forth the following four evaluation factors for assessing each offeror's proposal and technical information:

- Personnel experience/corporate experience/past performance
- Technical Approach
- Management Approach
- Facilities and Resources

The RFP further explained that the personal experience/corporate experience/past performance evaluation factor would be significantly more important than an offeror's technical approach; the technical approach and management approach factors would be of equal weight; and both the technical approach and management approach factors would be significantly more important than the facilities and resources factor. RFP at 132.

Finally, the RFP advised offerors that the Navy intended to award this contract without discussions. With respect to the oral presentation, the RFP advised:

"[t]he oral presentation and the question and answer session will not constitute a part of the proposal, and the information communicated thereby will not become a part of any contract resulting from this RFP. Neither the oral presentation nor the question and answer session will constitute discussions, as defined in [Federal Acquisition Regulation §] 15.601 and 15.610, nor will they obligate the [g]overnment to conduct discussions or to solicit or entertain any revisions to the offer or a best and final offer."

RFP at 93.

By the July 30 closing date, the agency received submissions from three offerors, General Physics, EG&G and Booz-Allen Hamilton.¹ Upon receipt of the submissions, the technical information was distributed to the technical evaluation review panel (TERP), and the cost information to the cost analysis panel (CAP).

By letters dated August 2, each of the offerors was invited to provide oral presentations. These letters advised that an invitation to make a presentation did not mean that the offeror had been determined to be in the competitive range. They also reiterated the Navy's view that "neither the oral presentation nor the question and answer session will constitute discussions" and admonished offerors not to discuss or present any information contained in their proposals (as that term is defined in the RFP). Navy's August 2 letters to the offerors. General Physics made its oral presentation on August 9, and the other two offerors made presentations shortly thereafter. All presentations were attended by the members of the TERP and were videotaped.

During the course of the question and answer session, the Navy asked General Physics--and each of the other offerors as well--how many of the key personnel

¹Booz-Allen Hamilton has filed its own protest against this procurement, B-275934.2, which raises different issues from those raised by General Physics. Since the Booz-Allen protest was filed here after the company first pursued an agency-level protest, it is not ready for resolution and will be the subject of a separate decision.

identified for this effort are also identified as key personnel on other Navy contracts, and had any of those other Navy offices agreed to release the key personnel identified here from their prior commitments. When General Physics responded that [DELETED] percent of its identified key personnel were already committed as key personnel on other Navy contracts, and that it had not yet contacted the other Navy offices involved, the evaluators assigned a high risk rating under the evaluation factors for personnel experience/corporate experience/past performance and technical approach.

On December 3, the TERP issued its report to the contract award review panel (CARP). The TERP's report identified strengths, weaknesses, risks, deficiencies, cross-impacts, and omissions in each proposal. Strengths and weaknesses were described as major or minor; risks were described as high, medium, or low. The TERP also assigned adjectival ratings of outstanding, good, satisfactory, or unacceptable to each of the evaluation factors. At approximately the same time, the CAP provided its findings to the CARP, enumerating each offeror's proposed and evaluated costs.

On December 10 and 17, the CARP completed its review of the CAP's and TERP's findings, respectively, and assigned point scores to each of the offerors, concluding that only Booz-Allen and EG&G were in the competitive range. The assigned scores and proposed and evaluated costs are set forth below:

OFFEROR	SCORE	PROPOSED COSTS	EVALUATED COSTS
EG&G	[DELETED]	[DELETED]	\$107,524,326
Booz-Allen	[DELETED]	[DELETED]	[DELETED]
General Physics	[DELETED]	[DELETED]	[DELETED]

The CARP concluded that EG&G's submission offered the best value to the government, and recommended award to EG&G. On December 17, the Source Selection Authority accepted the CARP's recommendation, and the contract was awarded to EG&G on December 20. This protest followed.

MEANINGFUL DISCUSSIONS

General Physics argues that the communication between it and the Navy during the question and answer portion of the oral presentation (regarding the availability of key personnel) constituted discussions. Thus, General Physics argues, the Navy was required to advise it of all weaknesses in its offer which had a significant adverse effect on the proposal's evaluation, and to permit it to submit a revised offer.

The Navy does not deny that if discussions are held they must be meaningful, or that upon conclusion of discussions all offerors must be permitted to submit best and final offers; rather, the Navy argues that the terms of the RFP here precluded any conclusion that discussions were held under these circumstances. Specifically, the Navy first contends that no discussions occurred because the RFP expressly advised that the communications between the agency and offerors during the oral presentation would not constitute discussions. In this regard, the Navy also contends that this challenge should be dismissed as untimely since the issue was apparent on the face of the RFP and should have been challenged prior to the date set for receipt of initial submissions.

The Navy also contends that the communication did not constitute discussions because the RFP defined proposals so narrowly that information about the availability of General Physics's key personnel was not proposal information, and thus the communication could not provide information essential for determining the acceptability of the proposal. Accordingly, the Navy claims that none of the traditional indicia for determining whether discussions occurred can be present.

Given our conclusion--discussed in detail below--that General Physics was not prejudiced by the Navy's actions, we conclude that this is not the appropriate case for a substantive ruling on whether the question and answer session constituted discussions. Until such time as this matter is raised by a party with a stake in the outcome, we will hold in abeyance our views on whether this approach is consistent with current statutory and regulatory requirements.

Our decisions sustaining protests that an agency held discussions with only one offeror--a scenario found in a minority of our meaningful discussions cases, which usually present distinctions between clarifications and discussions or challenges to the adequacy of discussions the agency intended to hold--have generally focused on the inherent unfairness of agency actions that fail to provide unsuccessful offerors the same opportunity as the awardee to improve their relative standing in a negotiated competition. Raytheon Co., B-261959.3, Jan. 23, 1996, 96-1 CPD ¶ 37, at 11-12; Paramax Sys. Corp.; CAE-Link Corp., B-253098.4; B-253098.5, Oct. 27, 1993, 93-2 CPD ¶ 282, at 6. In such cases, we generally conclude that if the protester had been given the opportunity to address evaluator concerns during discussions it would have submitted a materially revised proposal, and the outcome of the competition might have been changed. Raytheon Co., *supra*, at 12, n. 11.

While this is the remedy General Physics seeks here, when the protester itself is the entity with which the agency held discussions, the record will often demonstrate that the protester was not treated unfairly, and was not prejudiced vis-a-vis the awardee, because the protester is the entity that was afforded an opportunity not

made available to other offerors. See The Winkler Co., B-252162, June 8, 1993, 93-1 CPD ¶ 444, at 7; Planning Research Corp., B-237201; B-237201.3, Jan. 30, 1990, 90-1 CPD ¶ 131, at 5-6; Southwestern Bell Tel. Co.; Northern Telecom, Inc., B-200523.3 et al., Mar. 5, 1982, 82-1 CPD ¶ 203, at 24-25. Even though we recognize that an opportunity to submit a revised proposal often has the potential to change the outcome of a competition, Raytheon Co., *supra*, without such a showing of unfairness or unequal treatment in the conduct of the negotiations, we will not sustain a protest and recommend submission of revised proposals.² See The Winkler Co., *supra*; Planning Research Corp., *supra*; Southwestern Bell Telephone Co.; Northern Telecom, Inc., *supra*.

During the course of the question and answer session that occurred at the oral presentations here, the record shows that the Navy followed the procedures it advertised in its solicitation, and did not deviate from those procedures in any way. The Navy convened one oral presentation with each offeror, with three discrete parts: a detailed technical presentation, a presentation in response to a sample task, and a question and answer session. No additional communications occurred, and at the end of the oral presentation--as stated in the RFP--the Navy proceeded with its initial evaluation, did not open formal discussions, and did not request revised proposals. Under these circumstances, we cannot conclude that General Physics was deprived of equal treatment, given that the exchange that occurred during the question and answer session was, in effect, an opportunity for General Physics--even though the result of the opportunity was a decrease in its likelihood of award. Since there is no unfairness associated with the exchange here--which could have resulted in an improvement in the protester's competitive position--we cannot conclude that the protester was prejudiced by the agency's actions. See The Winkler Co., *supra*; Emerson Elec. Co., B-213382, Feb. 23, 1984, 84-1 CPD ¶ 233, at 4-5.

TECHNICAL EVALUATION

Approximately 4 months after General Physics's oral presentation, the TERP prepared its December 3 report to the CARP and concluded that the company's submission was technically unacceptable. Based on this conclusion, General Physics was excluded from the competitive range shortly before award for purposes of computing the 30 percent best value tradeoff set forth in the RFP.

²Despite the protester's assertion to the contrary, this approach is consistent with our long-standing prejudice standard. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54, at 3; see Statistica, Inc. v. Christopher, No. 96-1148, slip op. ____ (Fed. Cir. Dec. 19, 1996).

General Physics argues that many of the conclusions of the evaluation panel were improper and contends that the agency unreasonably considered its proposal technically unacceptable. In considering a protest against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was unreasonable and consistent with stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404, 410 (1987), 87-1 CPD ¶ 450, at 7.

We have reviewed each of these claims and we find that the agency reasonably concluded that the proposal was technically unacceptable. For purposes of illustration, we will discuss two of these issues--the Navy's finding that the proposal presented high risk under the personnel experience/corporate experience/past performance evaluation factor because [DELETED] percent of its key employees were currently identified as key employees on other Navy contracts; and the major weakness cited under the same evaluation factor because [DELETED] percent of the key employees did not meet the experience requirements in the RFP.

In arguing that the Navy acted unreasonably in assigning a high risk because [DELETED] percent of General Physics's key personnel were already committed as key personnel on other Navy contracts, General Physics claims that the agency applied an unstated evaluation criterion. While a quick review of the RFP verifies General Physics's claims that there was no separate requirement that an offeror identify only key personnel not committed to other contract efforts, we view the agency's consideration of the availability of such personnel as reasonably related to a comprehensive assessment of this factor. In addition, we fail to see how the Navy's assignment of risk under this factor can be termed unreasonable. With [DELETED] percent of General Physics's personnel committed elsewhere, award to General Physics would have risked either massive personnel substitutions on this effort or significant disruption to other Navy efforts. Under this circumstance, we find the Navy reasonably assigned a high risk under this factor.

General Physics also argues that the Navy unreasonably assigned its submission a major weakness under the personnel experience/corporate experience/past performance evaluation factor because the Navy concluded that [DELETED] percent of the company's key employees did not meet the experience requirements in the RFP. The RFP here required that each resume include a brief discussion of how the individual meets the position requirements set forth in the labor category definitions. RFP at 112. As stated above, at the conclusion of their review, the evaluators found that [DELETED] percent of the key personnel resumes did not explain how those individuals met the solicitation's experience requirements. The Navy also provided General Physics with a December 23 letter including a personnel matrix explaining in detail the basis for the Navy's conclusions.

In its initial protest to our Office, General Physics did not take issue with the Navy's specific findings, as explained in the December 23 letter, but instead supplemented

the materials it provided to the Navy with additional information about its key personnel in its response to the agency report. In addition, the protester argues that these were mere informational deficiencies that could have been addressed with discussions. Even if the informational deficiencies could have been addressed during discussions, the Navy was under no obligation to hold discussions here. When an agency states its intent to award on the basis of initial proposals--or, in this case, initial submissions--offerors are required to provide in their initial proposals all of the information necessary to permit the agency to conclude that the proposal meets the solicitation's requirements. Norden Sys., Inc., B-255343.3, Apr. 14, 1994, 94-1 CPD ¶ 257, at 7-8. Here, our review of the record shows nothing unreasonable about the Navy's assessments, and General Physics's approach of supplementing its submission in its comments to our Office provides no basis to conclude that the evaluation determination was unreasonable when made.

Given that the personnel experience/corporate experience/past performance evaluation factor was significantly more important than any other evaluation factor under the scheme set forth in the RFP, we conclude that the agency reasonably assessed a major weakness and high risk under this factor for General Physics's proposal. Similarly, given these evaluation results, we see nothing unreasonable in the final decision that the General Physics's proposal was technically unacceptable.

The protest is denied.

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of the United States